

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LANDMARK LEGAL FOUNDATION,)	
)	
)	
Plaintiff,)	
)	Civil Action No. 12-1726 (RCL)
)	
v.)	
)	
)	
UNITED STATES)	
ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
)	
Defendant.)	
_____)	

DEFENDANT’S NOTICE OF WITHDRAWAL

Plaintiff Landmark Legal Foundation continues to raise claims, most recently at the January 28, 2015 hearing before this Court, about the extent of Defendant’s initial search for records responsive to Plaintiff’s FOIA request. In particular, Plaintiff asserts that Defendant’s initial search did not include the EPA Administrator or Deputy Administrator, which are two of the three components of EPA’s Immediate Office of the Office of the Administrator. *See, e.g.*, Transcript of Motion Hearing (Video Conference) before the Hon. Royce C. Lamberth United States District Judge (hereafter “Tr.”), at 4-5, 7-8.

Defendant’s initial search is discussed in two declarations by Eric E. Wachter. *See* Declaration of Eric E. Wachter [ECF Doc. 30-1] (May 15, 2013); Supplemental Declaration of Eric E. Wachter [ECF Doc. 35-7] (July 24, 2013). In light of the extensive discussion about those declarations at the January 28 hearing, it is clear that certain statements contained therein

can be read to imply – incorrectly -- that Defendant’s initial search extended to all three components of the Immediate Office of the Office of the Administrator. Those statements appear in paragraphs 15 and 19 of Mr. Wachter’s May declaration [ECF Doc. 30-1], and in paragraphs 18 and 21 of Mr. Wachter’s July declaration [ECF 37-7].

Contrary to the specific claims made by Plaintiff at the January 28 hearing, Defendant’s initial search did include the Administrator and the Deputy Administrator. An initial search was conducted for the Administrator but yielded no responsive records. *See* ECF Doc. 55-4 (“no records” response from Aaron Dickerson after initial search for the Administrator). An initial search was also conducted for the Deputy Administrator but technical difficulties prevented the uploading of potentially responsive records. ECF Doc. 55-9 (Declaration of Nena Shaw describing initial search for Deputy Administrator). However, Defendant has found no evidence that the EPA’s Chief of Staff, the third component of the Immediate Office of the Office of the Administrator, was included in the initial search. Because the paragraphs referenced above can be read to imply – incorrectly -- that Defendant’s initial search included the Chief of Staff, Defendant hereby withdraws Mr. Wachter’s May 15, 2013 and July 24, 2013 declarations [ECF Doc. 30-1 and 35-7], and will not subsequently rely on those declarations. Defendant also retracts any statement, whether written or oral, made on its behalf in this action which indicates that its initial search included the EPA’s Chief of Staff.

This withdrawal should not be construed as a concession on behalf of the EPA or its employees that Mr. Wachter’s declarations were submitted for an improper purpose or were prepared or filed in bad faith. The EPA is simultaneously filing a motion for leave to supplement its Opposition to Plaintiff’s Motion for Spoliation Sanctions to address Plaintiff’s oral request for

criminal contempt sanctions. *See* Tr. at 24-25. The proposed supplemental filing is also being submitted simultaneously herewith.

Respectfully submitted,

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/s/

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